

LARRY J. SIMMONS
Claimant

SIM PARK GOLF COURSE
Respondent

NORTHWESTERN NATIONAL CASUALTY
Insurance Carrier

KANSAS WORKERS COMPENSATION FUND

ORDER

APPEARANCES

Claimant appeared by his attorney, Gary A. Winfrey of Wichita, Kansas. The respondent and its insurance carrier appeared by their attorney, James A. Cline of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Scott J. Mann of Hutchinson, Kansas.

RECORD

The Appeals Board has considered the record listed in the Award.

STIPULATIONS

The Appeals Board adopts the stipulations listed in the Award for Docket No. 186,887 with one exception. The Award fails to note that the parties stipulated that claimant's bilateral carpal tunnel was a compensable injury. On page 5 of the regular hearing transcript the Administrative Law Judge described the stipulation as follows: "The respondent admits the compensability of the bilateral carpal tunnel syndrome with respect to all issues." Respondent's submission letter contains the same stipulation. For purposes of this appeal the Appeals Board therefore finds that the parties stipulated that claimant's bilateral carpal tunnel was a compensable workers compensation injury.

ISSUES

Claimant's Application for Review lists the following issues:

- (1) Whether the carpal tunnel syndrome arose out of and in the course of employment;
- (2) The amount of claimant's average weekly wage;
- (3) The nature and extent of claimant's disability;
- (4) Whether claimant is entitled to future medical treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent has acknowledged that it stipulated that the carpal tunnel injury was a compensable injury. Respondent contends that the parties, nevertheless, presented evidence relating to whether the injury arose out of and in the course of employment and, accordingly, claimant was not prejudiced by the fact that the Administrative Law Judge decided this issue based upon the facts and evidence presented. Respondent argues that neither party litigated the claim differently because of the stipulation.

The Appeals Board finds first that the stipulation that the injury is compensable includes within it a stipulation that the injury arose out of and in the course of employment. The Appeals Board further finds that the parties must be bound by this stipulation unless for a good reason shown the Administrative Law Judge allows the party to withdraw the stipulation and thereafter affords the opposing party reasonable opportunity to present evidence on the issue in question. See Morrison v. Hurst Drilling Co., 212 Kan. 706, 512

P.2d 438 (1973) and Scammahorn v. Gibraltar Savings & Loan Assn., 197 Kan. 410, 416 P.2d 771 (1966).

The Appeals Board therefore holds that the finding by the Administrative Law Judge that the carpal tunnel injury did not arise out of and in the course of employment must be reversed. This leaves several issues which the Administrative Law Judge did not decide. This action is therefore remanded for a decision on those questions. The issues to be decided on remand include: (1) Average weekly wage; (2) nature and extent of disability; (3) Fund liability; and (4) future medical.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the December 30, 1994 Award by Administrative Law Judge Shannon S. Krysl finding the claimant's carpal tunnel injury did not arise out of and in the course of his employment should be, and the same is hereby, reversed and the claim is remanded for decision on all other issues not stipulated to before the Administrative Law Judge.

IT IS SO ORDERED.

Dated this ____ day of March, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Gary A. Winfrey, Wichita, Kansas
James A. Cline, Wichita, Kansas
Scott J. Mann, Hutchinson, Kansas
Shannon S. Krysl, Administrative Law Judge
George Gomez, Director